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Attorneys for Plaintiffs and the Class

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO AND OAKLAND DIVISION

THOMAS FERNANDEZ, LORA SMITH, and) Case No. C-06-07339 CW
 TOSHA THOMAS, individually and on behalf)
 of a class of all other persons similarly situated,)

Plaintiffs,)

vs.)

K-M INDUSTRIES HOLDING CO., INC.;)
 K-M INDUSTRIES HOLDING CO., INC.)
 ESOP PLAN COMMITTEE; WILLIAM E.)
 AND DESIREE B. MOORE REVOCABLE)
 TRUST; TRUSTEES OF THE WILLIAM E.)
 AND DESIREE B. MOORE REVOCABLE)
 TRUST; CIG ESOP PLAN COMMITTEE;)
 NORTH STAR TRUST COMPANY;)
 DESIREE B. MOORE REVOCABLE TRUST;)
 WILLIAM E. MOORE MARITAL TRUST;)
 WILLIAM E. MOORE GENERATION-)
 SKIPPING TRUST; and DESIREE MOORE,)
 BOTH IN HER INDIVIDUAL CAPACITY)
 AND AS TRUSTEE OF THE WILLIAM E.)
 AND DESIREE B. MOORE REVOCABLE)
 TRUST'S SUCCESSOR TRUSTS NAMED)
 ABOVE,)

Defendants.)

**DECLARATION OF NINA WASOW IN
 SUPPORT OF PLAINTIFFS'
 OPPOSITION TO DEFENDANTS'
 MOTIONS FOR SUMMARY
 JUDGMENT**

DECLARATION OF NINA WASOW IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS'
 MOTIONS FOR SUMMARY JUDGMENT
 [Case No. C-06-07339 CW]

1
2 I, Nina Wasow, declare as follows:

3 1. I am a member in good standing of the State Bar of California and an attorney
4 with Lewis, Feinberg, Lee, Renaker & Jackson, P.C., which is counsel for Plaintiffs and the
5 Class in this action. I have personal knowledge of the facts contained in this declaration and, if
6 called to testify, will testify as set forth below.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the
8 deposition of Joseph Cristiano taken April 8, 2008.

9 3. Attached hereto as Exhibit 2 is a true and correct copy of the death certificate for
10 William E. Moore. The document was produced by the K-M Defendants and is bates stamped
11 KMH 1797.

12 4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the
13 deposition of Dan Stritmatter taken March 12, 2008.

14 5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the
15 deposition of Peter Cazzolla taken March 19, 2008.

16 6. Attached hereto as Exhibit 5 is a true and correct copy of Minutes of the Annual
17 Combined Meeting of the Board of Directors and Shareholders of Kelly-Moore Paint Company,
18 dated March 26, 1997. The document was produced by the K-M Defendants and is bates
19 stamped KMH 11004-11008. The document was introduced as deposition exhibit 68.

20 7. Attached hereto as Exhibit 6 is a true and correct copy of Minutes of a Joint
21 Special Meeting of the Boards of Directors of K-M Industries Holding Co., Inc. and Kelly-Moore
22 Paint Company, dated March 9, 2006. The document was produced by the K-M Defendants and
23 is bates stamped KMH 555-557.

24 8. At various points in time, the entire Moore family has served on the Board of
25 Directors of Kelly-Moore Paint and K-M Industries Holding Co., Inc. *See, e.g.*, Exhs. 5, 7, 8.

26 9. Attached hereto as Exhibit 7 is a true and correct copy of the Unanimous Written
27 Consent in Lieu of a Meeting of the Board of Directors of Kelly-Moore Paint Company, Inc.,
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1 dated March 14, 2003. The document was produced by the K-M Defendants and is bates
2 stamped KMH 6546-6547.

3 10. Attached hereto as Exhibit 8 is a true and correct copy of minutes of a Joint
4 Special Meeting of the Boards of Directors of KMH and Kelly-Moore Paint, dated February 12,
5 2003. The document was produced by the K-M Defendants and is bates stamped KMH 505-508.

6 11. Attached hereto as Exhibit 9 is a true and correct copy of an ESOP Stock Purchase
7 Agreement dated October 13, 1998. The document was produced by the K-M Defendants and is
8 bates stamped MK 1589-1598. The document was introduced as deposition exhibit 3.

9 12. Attached hereto as Exhibit 10 is a true and correct copy of a Declaration of
10 Division of Trusts for the Moore Trust. The document was produced by the Moore Trust
11 Defendants and is bates stamped MT 2134-2136.

12 13. Attached hereto as Exhibit 11 is a true and correct copy of a valuation of
13 California Capital Insurance Company as of June 30, 1998, by Duff & Phelps LLC. The
14 document was produced by the K-M Defendants and is bates stamped CIG 1314-1361. The
15 document was introduced as deposition exhibit 14.

16 14. Attached hereto as Exhibit 12 is a true and correct copy of Actions by the
17 Unanimous Written Consent of the Board of Directors of California Capital Insurance Company,
18 dated September 21, 1998. The document was produced by the K-M Defendants and is bates
19 stamped CIG 13491-13492.

20 15. Attached hereto as Exhibit 13 is a true and correct copy of minutes of the Board of
21 Directors meeting of California Capital Insurance Company and Subsidiaries, dated October 27,
22 2006. The document was produced by the K-M Defendants and is bates stamped CIG 16128-
23 16129.

24 16. Attached hereto as Exhibit 14 is a true and correct copy of an ESOP Stock
25 Purchase Agreement dated October 18, 1999. The document was produced by the K-M
26 Defendants and is bates stamped CIG 1870-1878. The document was introduced as deposition
27 exhibit 25.

1 17. Attached hereto as Exhibit 15 is a true and correct copy of an excerpt from a
2 Presentation to North Star Trust Company as Trustee of the K-M Industries Holding Company,
3 Inc. Employee Stock Ownership Plan dated September 26, 2005. The document was produced
4 by the K-M Defendants and is bates stamped KMH 5447 and 5463-5465.

5 18. Attached hereto as Exhibit 16 is a true and correct copy of excerpts from the
6 deposition of Herb Giffins taken March 28, 2008.

7 19. Attached hereto as Exhibit 17 is a true and correct copy of an organizational chart
8 of Kelly-Moore Paint Co. The document was produced by the K-M Defendants and is bates
9 stamped KMH 9088.

10 20. Attached hereto as Exhibit 18 is a true and correct copy of a Paco Textures Memo
11 by Doug Merrill dated December 15, 1976. The document was produced by the K-M Defendants
12 and is bates stamped KMH-AR 5173.

13 21. Attached hereto as Exhibit 19 is a true and correct copy of Kelly-Moore's
14 Answers to Interrogatories in *In re Complex Asbestos Litigation*, dated June 8, 1990. The
15 document was produced by Stout Risius Ross in response to a subpoena by Plaintiffs and is bates
16 stamped SRR 954-1008.

17 22. Attached hereto as Exhibit 20 is a true and correct copy of a letter from S.L.
18 Highleyman to Harlan K. Veal, Esq., dated November 25, 1981. The document was produced by
19 the K-M Defendants and is bates stamped KMH-AR 1941-1943. The document was introduced
20 as deposition exhibit 88.

21 23. Attached hereto as Exhibit 21 is a true and correct copy of the Reed Decorative
22 Products Asbestos Litigation Model display of expected mortality by calendar year. The
23 document was produced by the K-M Defendants and is bates stamped KMH-AR 1925.

24 24. Attached hereto as Exhibit 22 is a true and correct copy of the Reed Decorative
25 Products Asbestos Litigation Model display of expected loss costs by calendar year of
26 manifestation. The document was produced by the K-M Defendants and is bates stamped KMH-
27 AR 1933.

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DECLARATION OF NINA WASOW IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT
[Case No. C-06-07339 CW]

1 25. Attached hereto as Exhibit 23 is a true and correct copy of a memo from Doug
2 Merrill to William E. Moore entitled "Review of 'Analysis of Asbestos-Related Claim of Kelly-
3 Moore Paint Company, Inc.,'" dated October 17, 1982. The document was produced by the K-M
4 Defendants and is bates stamped KMH-AR 2017.

5 26. Attached hereto as Exhibit 24 is a true and correct copy of a document entitled
6 "Brief History of Kelly-Moore's Paco Dry Wall Division's Production and Sales." The
7 document was produced by the K-M Defendants and is bates stamped KMH-AR 2033-2035.

8 27. Attached hereto as Exhibit 25 is a true and correct copy of newspaper articles
9 about the Johns-Manville bankruptcy. The document was produced by the K-M Defendants and
10 is bates stamped KMH-AR 2003-2012.

11 28. Attached hereto as Exhibit 26 is a true and correct copy of an article entitled
12 "Overview of Asbestos Issues and Trends," by the American Academy of Actuaries. The
13 document was produced by Defendant North Star and is bates stamped NS 802-827.

14 29. Attached hereto as Exhibit 27 is a true and correct copy of a letter from CIGNA to
15 Pat McDonald of Kelly-Moore Paint, dated November 3, 1997. The document was produced by
16 the K-M Defendants and is bates stamped PL 10444-10445. The document was introduced as
17 deposition exhibit 70.

18 30. Attached hereto as Exhibit 28 is a true and correct copy of excerpts from the
19 deposition of Cheryl Mills taken December 17, 2003 in *Kelly-Moore Paint Company, Inc. v.*
20 *Dow Chemical Company*, No. 19785-BH02 (Brazoria County, Texas). The document was
21 produced by the K-M Defendants and is bates stamped KMH_DOW_ESI 344.

22 31. Attached hereto as Exhibit 29 is a true and correct copy of the K-M Defendants'
23 First Supplemental Response to Plaintiffs' First Set of Interrogatories, dated November 6, 2007.
24 The document was introduced as deposition exhibit 85.

25 32. Attached hereto as Exhibit 30 is a true and correct copy of a chart of asbestos
26 claims pending against Kelly-Moore at year-end from 1997 to 2006. The document was
27 produced by the K-M Defendants and is bates stamped CIG_ESI 593_CONF.

1 33. Attached hereto as Exhibit 31 is a true and correct copy of an excerpt of a
2 presentation by Kirkland & Ellis to KMH on February 2, 2002. The document was produced by
3 the K-M Defendants and is bates stamped KMH 10821-10832. The document was introduced as
4 deposition exhibit 259.

5 34. Attached hereto as Exhibit 32 is a true and correct copy of a letter from Truce,
6 Veal, Jackson & Taylor to Doug Merrill of Kelly-Moore Paint dated October 8, 1981. The
7 document was produced by the K-M Defendants and is bates stamped PL 3042-3044. The
8 document was introduced as deposition exhibit 90.

9 35. Attached hereto as Exhibit 33 is a true and correct copy of a letter from Cheryl
10 Mills to James Ferraro of CNA dated December 10, 1999. The document was produced by the
11 K-M Defendants and is bates stamped PL 9-10. The document was introduced as deposition
12 exhibit 72.

13 36. Attached hereto as Exhibit 34 is a true and correct copy of a letter from Zurich-
14 American Insurance Group to Joseph Cristiano of Kelly-Moore Paint dated July 7, 1998. The
15 document was produced by the K-M Defendants and is bates stamped PL 10454-56. The
16 document was introduced as deposition exhibit 71.

17 37. Attached hereto as Exhibit 35 is a true and correct copy of a document entitled
18 "Clarification of Facts Concerning Coverage and Coverage Disputes." The document was
19 produced by the K-M Defendants and is bates stamped KMH_ESI 6484-KMH_ESI 6484.003.

20 38. Attached hereto as Exhibit 36 is a true and correct copy of "Kelly-Moore Paint
21 Company, Inc. Coverage Chart." The document was produced by the K-M Defendants and is
22 bates-stamped KMH_ESI00006493_CONF.

23 39. Attached hereto as Exhibit 37 is a true and correct copy of the Complaint in *Kelly-*
24 *Moore Paint Company, Inc. v. Liberty Mutual Insurance Co., et al.*, filed October 4, 2001 in the
25 Superior Court of San Francisco. The document was produced by the K-M Defendants and is
26 bates stamped PL 1695-1716.

27 40. Attached hereto as Exhibit 38 is a true and correct copy of excerpts from the
28

1 deposition of Stephen Ferrari taken March 26, 2008.

2 41. Attached hereto as Exhibit 39 is a true and correct copy of the minutes of the
3 Annual Combined Meeting of the Board of Directors and Shareholders of Kelly-Moore Paint
4 Company, dated April 21, 1998. The document was produced by the K-M Defendants and is
5 bates stamped KMH 452-456. The document was introduced as deposition exhibit 62.

6 42. Attached hereto as Exhibit 40 is a true and correct copy of excerpts from the
7 deposition of John Menke taken March 21, 2008.

8 43. Attached hereto as Exhibit 41 is a true and correct copy of a letter from Kyle
9 Coltman of Menke & Associates to William Moore, dated April 17, 1998. The document was
10 produced by the Moore Trust Defendants and is bates stamped MT 107-109. The document was
11 introduced as deposition exhibit 33.

12 44. Attached hereto as Exhibit 42 is a true and correct copy of a Proposal for the
13 Design and Installation of an Employee Stock Ownership Plan by Menke & Associates, Inc. The
14 document was produced by the Menke Group in response to a subpoena by Plaintiffs and is bates
15 stamped MK 1745-1755. The document was introduced as deposition exhibit 34.

16 45. Attached hereto as Exhibit 43 is a true and correct copy of a letter from Sansome
17 Street Appraisers, Inc. to Steve Ferrari dated May 26, 1998. The document was produced by the
18 Menke Group in response to a subpoena by Plaintiffs and is bates stamped MK 1141-1143. The
19 document was introduced as deposition exhibit 53.

20 46. Attached hereto as Exhibit 44 is a true and correct copy of a brochure for Sansome
21 Street Appraisers, Inc. The document was produced by the K-M Defendants and is bates
22 stamped KMH 1312-1315. The document was introduced as deposition exhibit 30.

23 47. Attached hereto as Exhibit 45 is a true and correct copy of an Evaluation of the
24 Common Stock of Kelly-Moore Paint Company, Inc. as of July 31, 1998, by B.J. Brooks. The
25 document was produced by the K-M Defendants and is bates stamped KMH 1439-1476. The
26 document was introduced as deposition exhibit 9.

27 48. Attached hereto as Exhibit 46 is a true and correct copy of a letter from B.J.

1 Brooks to the Board of Directors of K-M Industries Holding Co., Inc. dated October 12, 1998.
2 The document was produced by the K-M Defendants and is bates stamped KMH 1367-1370.
3 The document was introduced as deposition exhibit 55.

4 49. Attached hereto as Exhibit 47 is a true and correct copy of excerpts from the
5 deposition of Robert Ireland taken April 23, 2008.

6 50. Attached hereto as Exhibit 48 is a true and correct copy of a letter from Stephen
7 Ferrari to B.J. Brooks dated May 27, 1998. The document was produced by the Menke Group in
8 response to Plaintiffs' subpoena and is bates stamped MK 3568. The document was introduced
9 as deposition exhibit 78.

10 51. Attached hereto as Exhibit 49 is a true and correct copy of a fax from Stephen
11 Ferrari to B.J. Brooks dated June 18, 1998. The document was produced by the Menke Group in
12 response to Plaintiffs' subpoena and is bates stamped MK 3921-22. The document was
13 introduced as deposition exhibit 79.

14 52. Attached hereto as Exhibit 50 is a true and correct copy of a fax from Stephen
15 Ferrari to B.J. Brooks dated July 25, 2008. The document was produced by the Menke Group in
16 response to Plaintiffs' subpoena and is bates stamped MK 3588-3591. The document was
17 introduced as deposition exhibit 80.

18 53. Attached hereto as Exhibit 51 is a true and correct copy of a fax from Stephen
19 Ferrari to B.J. Brooks dated October 2, 1998. The document was produced by the Menke Group
20 in response to Plaintiffs' subpoena and is bates stamped MK 3812-3813. The document was
21 introduced as deposition exhibit 81.

22 54. Attached hereto as Exhibit 52 is a true and correct copy of handwritten notes by
23 B.J. Brooks. The document was produced by the Menke Group in response to Plaintiffs'
24 subpoena and is bates stamped MK 3534-3549. The document was introduced as deposition
25 exhibit 52.

26 55. Attached hereto as Exhibit 53 is a true and correct copy of a report by Robert
27 Ireland entitled "Minority Interest Fair Market Valuation of the Series P, Class B Shares of

1 Common Stock of K-M Industries Holding Co., Inc. for Employee Stock Ownership Plan
2 Purposes as of December 31, 2000,” dated March 27, 2001. The document was produced by the
3 K-M Defendants and is bates stamped KMH 1041-1104. The document was introduced as
4 deposition exhibit 122.

5 56. Attached hereto as Exhibit 54 is a true and correct copy of a handwritten “note to
6 file” by Stephen Ferrari dated October 1, 1998. The document was produced by the K-M
7 Defendants and is bates stamped KMH 10997. The document was introduced as deposition
8 exhibit 69.

9 57. Attached hereto as Exhibit 55 is a true and correct copy of a letter from Cheryl
10 Mills to Ernst & Young dated February 16, 1998. The document was produced by the K-M
11 Defendants and is bates stamped KMH 7204-7205. The document was introduced as deposition
12 exhibit 76.

13 58. Attached hereto as Exhibit 56 is a true and correct copy of Minutes of a Special
14 Meeting of the Board of Directors of K-M Industries Holding Co., Inc. dated October 13, 1998.
15 The document was produced by the K-M Defendants and is bates stamped KMH 7557-7560.

16 59. Attached hereto as Exhibit 57 is a true and correct copy of a document entitled
17 “Overview of K-M Industries Holding Co., Inc. Legal Structure and Ownership.” The document
18 was produced by the Moore Trust Defendants and is bates stamped MT 292.

19 60. Attached hereto as Exhibit 58 is a true and correct copy of a letter from Cheryl
20 Mills to Joseph Cristiano dated December 11, 1998. The document was produced by the K-M
21 Defendants and is bates stamped KMH_ESI00006668-6668.006. The document was introduced
22 as deposition exhibit 75.

23 61. Attached hereto as Exhibit 59 is a true and correct copy of excerpts from the
24 deposition of Kenneth Bodenstein taken April 11, 2008.

25 62. Attached hereto as Exhibit 60 is a true and correct copy of a letter from Cheryl
26 Mills to Ernst & Young dated February 13, 1997. The document was produced by Ernst &
27 Young in response to Plaintiffs’ subpoena and is bates stamped EY000042. The document was

1 introduced as deposition exhibit 134.

2 63. Attached hereto as Exhibit 61 is a true and correct copy of a letter from Cheryl
3 Mills to Ernst & Young dated February 8, 1999. The document was produced by the K-M
4 Defendants and is bates stamped KMH007206-7207. The document was introduced as
5 deposition exhibit 128.

6 64. Attached hereto as Exhibit 62 is a true and correct copy of a letter from Kelly-
7 Moore Paint Company, Inc. to Ernst & Young dated April 4, 1997. The document was produced
8 by Ernst & Young in response to Plaintiffs' subpoena and is bates stamped EY000044-49. The
9 document was introduced as deposition exhibit 124.

10 65. Attached hereto as Exhibit 63 is a true and correct copy of a letter from Kelly-
11 Moore Paint Company, Inc. to Ernst & Young dated March 27, 1998. The document was
12 produced by the K-M Defendants and is bates stamped KMH 11009-11014. The document was
13 introduced as deposition exhibit 125.

14 66. Attached hereto as Exhibit 64 is a true and correct copy of a letter from Kelly-
15 Moore Paint Company, Inc. to Ernst & Young dated February 12, 1999. The document was
16 produced by the K-M Defendants and is bates stamped KMH 11022-11028. The document was
17 introduced as deposition exhibit 127.

18 67. Attached hereto as Exhibit 65 is a true and correct copy of a letter from Kelly-
19 Moore Paint Company, Inc. to Ernst & Young dated February 11, 2000. The document was
20 produced by Ernst & Young in response to Plaintiffs' subpoena and is bates stamped EY000070-
21 77. The document was introduced as deposition exhibit 129.

22 68. Attached hereto as Exhibit 66 is a true and correct copy of the Consolidated
23 Financial Statements of Kelly-Moore Paint Company, Inc. for the years ended December 31,
24 2000 and 1999 with Report of Independent Auditors. The document was produced by the K-M
25 Defendants and is bates stamped KMH 432-451.

26 69. Attached hereto as Exhibit 67 is a true and correct copy of a chart entitled "K-M
27 Industries Current Corporate Structure." The document was produced by the K-M Defendants

1 and is bates stamped CIG 4588.

2 70. Attached hereto as Exhibit 68 is a true and correct copy of a letter from Duff &
3 Phelps, LLC to William Moore dated June 22, 1999. The document was produced by the K-M
4 Defendants and is bates stamped CIG 8250-8254. The document was introduced as deposition
5 exhibit 16.

6 71. Attached hereto as Exhibit 69 is a true and correct copy of a valuation of K-M
7 Industries Holding Co., Inc. Class I Stock as of June 30, 1999, by Duff & Phelps LLC. The
8 document was produced by the K-M Defendants and is bates stamped KMH 5817-5870. The
9 document was introduced as deposition exhibit 18.

10 72. Attached hereto as Exhibit 70 is a true and correct copy of excerpts from the
11 deposition of Edward Mines taken April 2, 2008.

12 73. Attached hereto as Exhibit 71 is a true and correct copy of handwritten notes by
13 Edward Mines. The document was produced by the K-M Defendants and is bates stamped CIG
14 15737-15738. The document was introduced as deposition exhibit 19.

15 74. Attached hereto as Exhibit 72 is a true and correct copy of a Professional Services
16 Agreement by Columbia Financial Advisors, Inc. dated August 11, 1999. The document was
17 produced by the K-M Defendants and is bates stamped CIG 8203-8206. The document was
18 introduced as deposition exhibit 23.

19 75. Attached hereto as Exhibit 73 is a true and correct copy of excerpts from the
20 deposition of Kathryn Daly taken April 30, 2008.

21 76. Attached hereto as Exhibit 74 is a true and correct copy of a presentation to
22 California Capital Insurance Company Proposed ESOP Trust Committee for ESOP Appraisal
23 and Financial Advisory Services by Columbia Financial Advisors, Inc. dated August 10, 1999.
24 The document was produced by the K-M Defendants and is bates stamped CIG 8164-8181. The
25 document was introduced as deposition exhibit 22.

26 77. Attached hereto as Exhibit 75 is a true and correct copy of a letter from Columbia
27 Financial Advisors, Inc. to William Moore dated September 7, 1999. The document was

1 produced by the K-M Defendants and is bates stamped CIG 8220-8231. The document was
2 introduced as deposition exhibit 24.

3 78. Attached hereto as Exhibit 76 is a true and correct copy of a letter from Columbia
4 Financial Advisors, Inc. to William Moore dated September 16, 1999. The document was
5 produced by the K-M Defendants and is bates stamped CIG 8154 and 8160. The document was
6 introduced as deposition exhibit 246.

7 79. Attached hereto as Exhibit 77 is a true and correct copy of a letter from Duff &
8 Phelps, LLC to William Moore dated October 18, 1999. The document was produced by the K-
9 M Defendants and is bates stamped CIG 8319-8320. The document was introduced as
10 deposition exhibit 139.

11 80. Attached hereto as Exhibit 78 is a true and correct copy of handwritten notes by
12 Kenneth Bodenstein dated April 30, 2002. The document was produced by the K-M Defendants
13 and is bates stamped CIG 136. The document was introduced as deposition exhibit 111.

14 81. Attached hereto as Exhibit 79 is a true and correct copy of a Promissory Note
15 dated October 18, 1999. The document was produced by the K-M Defendants and is bates
16 stamped CIG 4561-62.

17 82. Attached hereto as Exhibit 80 is a true and correct copy of an excerpt of the
18 deposition of Joseph Cristiano taken December 18, 2007 in *Kelly-Moore Paint Company, Inc. v.*
19 *Continental Insurance Company, et al.* The document was produced by the K-M Defendants and
20 is bates stamped KMH_HE_ESI 167.

21 83. Attached hereto as Exhibit 81 is a true and correct copy of a letter from Cheryl
22 Mills to Joseph Cristiano dated July 25, 2000. The document was produced by the K-M
23 Defendants and is bates stamped PL 21726-21727. The document was introduced as deposition
24 exhibit 77.

25 84. Attached hereto as Exhibit 82 is a true and correct copy of a letter from Mills &
26 Larson to Ernst & Young dated February 11, 2000. The document was produced by the K-M
27 Defendants and is bates stamped PL 10814-10815. The document was introduced as deposition
28

1 exhibit 130.

2 85. Attached hereto as Exhibit 83 is a true and correct copy of a letter from Kelly-
3 Moore Paint Company, Inc. to Ernst & Young dated February 20, 2001. The document was
4 produced by Ernst & Young in response to Plaintiffs' subpoena and is bates stamped EY000147-
5 153. The document was introduced as deposition exhibit 131.

6 86. Attached hereto as Exhibit 84 is a true and correct copy of a letter from Cheryl
7 Mills to Ernst & Young dated February 26, 2001. The document was produced by Ernst &
8 Young in response to Plaintiffs' subpoena and is bates stamped EY000170-171. The document
9 was introduced as deposition exhibit 132.

10 87. Attached hereto as Exhibit 85 is a true and correct copy of a letter from Joseph
11 Cristiano to all eligible employees of Kelly-Moore Paint Co. dated May 1, 1998. The document
12 was produced by the K-M Defendants and is bates stamped KMH 000150. The document was
13 introduced as deposition exhibit 116.

14 88. Attached hereto as Exhibit 86 is a true and correct copy of a letter from Menke &
15 Associates, Inc. to Stephen Ferrari dated September 14, 1998. The document was produced by
16 the K-M Defendants and is bates stamped KMH 4951. The document was introduced as
17 deposition exhibit 56.

18 89. Attached hereto as Exhibit 87 is a true and correct copy of a DVD of an
19 "Employee Stock Ownership Plan/401k Plan Update" presentation to Kelly-Moore Paint
20 employees. The DVD was produced by the K-M Defendants.

21 90. Attached hereto as Exhibit 88 is a true and correct copy of a memo from Peter
22 Cazzolla to CIG Business Partners. The document was produced by Plaintiffs and is bates
23 stamped P056. The document was introduced as deposition exhibit 148.

24 91. Attached hereto as Exhibit 89 is a true and correct copy of an email from Ken
25 Myatt to Nancy Harty and Ed Mines dated October 8, 1999. The document was produced by the
26 K-M Defendants and is bates stamped CIG 12099. The document was introduced as deposition
27 exhibit 108.

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DECLARATION OF NINA WASOW IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS'
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1 92. Attached hereto as Exhibit 90 is a true and correct copy of a document entitled
2 “ESOP Questions and Answers,” dated October 12, 1999. The document was produced by the
3 K-M Defendants and is bates stamped CIG 12102-12105. The document was introduced as
4 deposition exhibit 109.

5 93. Attached hereto as Exhibit 91 is a true and correct copy of a memo from Peter
6 Cazzolla to CIG Team Members and Shareholders. The document was produced by Plaintiffs
7 and is bates stamped P054. The document was introduced as deposition exhibit 156.

8 94. Attached hereto as Exhibit 92 is a true and correct copy of a memo from Steve
9 Ferrari to the employees of the Hurst factory dated October 26, 1999. The document was
10 produced by the K-M Defendants and is bates stamped KMH 000154. The document was
11 introduced as deposition exhibit 59.

12 95. Attached hereto as Exhibit 93 is a true and correct copy of a letter from Joseph
13 Cristiano to all eligible employees of Kelly-Moore Paint dated July 14, 1999. The document was
14 produced by the K-M Defendants and is bates stamped KMH 000152. The document was
15 introduced as deposition exhibit 118.

16 96. Attached hereto as Exhibit 94 is a true and correct copy of a newsletter entitled
17 “Mind Our Own Business” dated December 2000. The document was produced by the K-M
18 Defendants and is bates stamped KMH 000093-94. The document was introduced as deposition
19 exhibit 188.

20 97. Attached hereto as Exhibit 95 is a true and correct copy of a newsletter entitled
21 “Mind Our Own Business” dated May 2001. The document was produced by the K-M
22 Defendants and is bates stamped KMH 000095-96. The document was introduced as deposition
23 exhibit 137.

24 98. Attached hereto as Exhibit 96 is a true and correct copy of a newsletter entitled
25 “Mind Our Own Business” dated October 2001. The document was produced by the K-M
26 Defendants and is bates stamped KMH 103-104. The document was introduced as deposition
27 exhibit 83.

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DECLARATION OF NINA WASOW IN SUPPORT OF PLAINTIFFS’ OPPOSITION TO DEFENDANTS’
MOTIONS FOR SUMMARY JUDGMENT
[Case No. C-06-07339 CW]

1 99. Attached hereto as Exhibit 97 is a true and correct copy of excerpts from the
2 deposition of Lora Smith taken April 16, 2008.

3 100. Attached hereto as Exhibit 98 is a true and correct copy of a memo dated May 23,
4 2002, from Peter Cazzolla to CIG Owners and Team Members. The document was produced by
5 the K-M Defendants and is bates stamped CIG 3587. The document was introduced as
6 deposition exhibit 27.

7 101. Attached hereto as Exhibit 99 is a true and correct copy of a memo dated January
8 21, 2003, from Peter Cazzolla to all CIG Team Members. The document was produced by the
9 K-M Defendants and is bates stamped CIG 2447. The document was introduced as deposition
10 exhibit 28.

11 102. Attached hereto as Exhibit 100 is a true and correct copy of a Trustee Engagement
12 Agreement dated April 22, 2003. The document was produced by the Moore Trust Defendants
13 and is bates stamped MT000543-551. The document was introduced as deposition exhibit 255.

14 103. Attached hereto as Exhibit 101 is a true and correct copy of handwritten notes
15 entitled "Report on Trustees." The document was produced by the K-M Defendants and is bates
16 stamped KMH 3943-3944. The document was introduced as deposition exhibit 10.

17 104. Attached hereto as Exhibit 102 is a true and correct copy of a document entitled
18 "Memo to file." The document was produced by the K-M Defendants and is bates stamped
19 KMH 3942. The document was introduced as deposition exhibit 254.

20 105. Attached hereto as Exhibit 103 is a true and correct copy of excerpts from the
21 deposition of John Hommel taken May 8, 2008.

22 106. Attached hereto as Exhibit 104 is a true and correct copy of handwritten notes by
23 John Hommel. The document was produced by North Star and is bates stamped NS 31768-
24 31909. The document was introduced as deposition exhibit 252.

25 107. Attached hereto as Exhibit 105 is a true and correct copy of handwritten notes
26 from North Star's files. The document was produced by North Star and is bates stamped NS
27 20019-20032. The document was introduced as deposition exhibit 256.

1 108. Attached hereto as Exhibit 106 is a true and correct copy of handwritten notes
2 from North Star's files. The document was produced by North Star and is bates stamped NS
3 20041-20062. The document was introduced as deposition exhibit 257.

4 109. Attached hereto as Exhibit 107 is a true and correct copy of handwritten notes by
5 John Hommel. The document was produced by North Star and is bates stamped NS 31489-
6 31560. The document was introduced as deposition exhibit 258.

7 110. Attached hereto as Exhibit 108 is a true and correct copy of handwritten notes
8 from North Star's files. The document was produced by North Star and is bates stamped NS
9 20230-20240. The document was introduced as deposition exhibit 263.

10 111. Attached hereto as Exhibit 109 is a true and correct copy of a letter from Stout
11 Risius Ross to North Star dated April 28, 2005. The document was produced by North Star and
12 is bates stamped NS 18994-19007. The document was introduced as deposition exhibit 262.

13 112. Attached hereto as Exhibit 110 is a true and correct copy of a printout from North
14 Star's home page. The document was introduced as deposition exhibit 253.

15 113. Attached hereto as Exhibit 111 is a true and correct copy of an article entitled
16 "Corporate Governance in an ESOP Company: the Legal Issues" by John Hommel, presented to
17 the ESOP Association 20th Annual Conference May 14-16, 1997. The document was introduced
18 as deposition exhibit 251.

19 114. Attached hereto as Exhibit 112 is a true and correct copy of the K-M Industries
20 Holding Co., Inc. Employee Stock Ownership Plan dated June 30, 1999. The document was
21 produced by the K-M Defendants and is bates stamped CIG 10954-11031. The document was
22 introduced as deposition exhibit 66.

23 115. Attached hereto as Exhibit 113 is a true and correct copy of the California Capital
24 Insurance Group Employee Stock Ownership Plan dated June 22, 1998. The document was
25 produced by the K-M Defendants and is bates stamped CIG 8426-8495.

26 116. Attached hereto as Exhibit 114 is a true and correct copy of the Kelly-Moore Paint
27 Company, Inc. Employee Stock Ownership Plan dated June 11, 1998. The document was

1 produced by the K-M Defendants and is bates stamped MK 1487-1556. The document was
2 introduced as deposition exhibit 65.

3 117. Attached hereto as Exhibit 115 is a true and correct copy of Kelly-Moore Paint
4 Company ESOP Plan Committee Resolutions to Authorize Borrowing and Purchase of Employer
5 Securities dated October 13, 1998. The document was produced by North Star and is bates
6 stamped NS00001647-1648. The document was introduced as deposition exhibit 4.

7 118. Attached hereto as Exhibit 116 is a true and correct copy of excerpts from the
8 deposition of Tosha Thomas taken April 18, 2008.

9 119. Attached hereto as Exhibit 117 is a true and correct copy of FASB Accounting
10 Principles Board No. 10.

11 120. Attached hereto as Exhibit 118 is a true and correct copy of American Institute of
12 Certified Public Accountants Statement of Position 96-1, Environmental Remediation Liabilities.

13 121. Attached hereto as Exhibit 119 is a true and correct copy of FASB Interpretation
14 No. 39, Offsetting of Amounts Related to Certain Contracts.

15 122. Attached hereto as Exhibit 120 is a true and correct copy of an excerpt of the
16 William E. and Desiree Moore 1990 Revocable Trust Agreement. The document was produced
17 by the Moore Trust Defendants and is bates stamped MT 2033 and 2042–2049.

18 123. Attached hereto as Exhibit 121 is a true and correct copy of excerpts from the
19 deposition of Thomas Fernandez taken April 21, 2008.

20 124. Attached hereto as Exhibit 122 is a true and correct copy of a document entitled
21 “Questions and Answers” from the Quarterly Employee Meeting dated August 16, 2004. The
22 document was produced by the K-M Defendants and is bates stamped CIG_ESI00002713-
23 CIG_ESI00002713.003. The document was introduced as deposition exhibit 228.

24 125. Attached hereto as Exhibit 123 is a true and correct copy of a statement from
25 Round Hill Securities, Inc. for the Moore Trust’s account. The document was produced by the
26 Moore Trust Defendants and is bates stamped MT 2260.

27 126. Attached hereto as Exhibit 124 is a true and correct copy of a Kelly-Moore memo
28

1 to Doug Merrill dated March 31, 1982. The document was produced by Stout Risius Ross in
2 response to Plaintiffs' subpoena and is bates stamped SRR 952.

3 127. Attached hereto as Exhibit 125 is a true and correct copy of a memo from North
4 Star to ESOP participants dated July 5, 2005. The document was produced by the K-M
5 Defendants and is bates stamped CIG 5150.

6 128. I reviewed the documents produced by North Star in this litigation, and there was
7 no report or memorandum analyzing whether or not Mr. Moore and his co-fiduciaries breached
8 their fiduciary duties in the 1998 or 1999 transactions.

9 129. North Star's production also did not include any documents showing or
10 suggesting that North Star had an attorney or valuation expert determine whether or not the
11 ESOP paid more than fair market value for the stock purchased from the Moore Trust in the 1998
12 and 1999 transactions

13 130. North Star's production also did not include any documents showing or
14 suggesting that North Star asked for or considered asking for a tolling agreement in order to
15 investigate Mr. Moore's potential fiduciary violations.

16
17 I declare under penalty of perjury that the foregoing is true and correct. Executed on July
18 10, 2008 at Oakland, California.

19
20 /s/
Nina Wasow